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No. 114, Original

In the Supreme Court of the United States

OCTOBER TERM, 1988

STATE OF LOUISIANA,
Plaintiff,

vs.

STATE OF MISSISSIPPI, ET AL.,
Defendants.

BRIEF IN OPPOSITION TO MOTION FOR LEAVE TO FILE COMPLAINT

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QUESTION PRESENTED

Whether Louisiana's Motion for Leave to File Complaint should be granted in view of the pending federal district court action which involves the same identical controversy with numerous other parties.

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EXHIBITS:

"A"—Intervention of State of Louisiana and Lake Providence Port Commission in Case of *Julia Donelson Houston, et al v. Ruth M. Thomas, et al,* United States District Court for the Southern District of Mississippi, Western Division A1

"B"—Third-Party Complaint of State of Louisiana and Lake Providence Port Commission in Case of *Julia Donelson Houston, et al v. Ruth M. Thomas, et al,* United States District Court for the Southern District of Mississippi, Western Division A7

No. 114, Original

In the Supreme Court of the United States

OCTOBER TERM, 1988

STATE OF LOUISIANA,
Plaintiff,

vs.

STATE OF MISSISSIPPI, ET AL.,
Defendants.

BRIEF IN OPPOSITION TO MOTION FOR LEAVE TO FILE COMPLAINT

The State of Mississippi and Julia Donelson Houston, Ruth Houston Baker and Hines H. Baker, Jr., Co-Executors and Co-Trustees of the Estate of George T. Houston, a/k/a George T. Houston, III, Deceased, and Ruth Houston Baker, Individually [hereinafter sometimes referred to as Mississippi], the defendants in this original action, respectfully submit this brief in opposition to the Motion for Leave to File Complaint filed in this action on September 14, 1988, by the plaintiff, the State of Louisiana [hereinafter referred to as Louisiana].

JURISDICTION

Louisiana invokes the original jurisdiction of this Court under Article III, Section 2, Clause 2, of the United States Constitution and 28 U.S.C. §1251(a). Complaint ¶1.

U. S. Const. Art. III, §2, cl. 2 provides in pertinent part:

> In all Cases . . . in which a State shall be a Party, the supreme Court shall have original Jurisdiction . . .

28 U.S.C. §1251(a) provides:

> The Supreme Court shall have original and exclusive jurisdiction of all controversies between two or more States.

STATEMENT OF THE CASE

Louisiana seeks leave of this Court to file its complaint against Mississippi and Julia Donelson Houston, Ruth Houston Baker and Hines H. Baker, Jr., Co-Executors and Co-Trustees of the Estate of George T. Houston, a/k/a George T. Houston, III, Deceased, and Ruth Houston Baker, Individually, who own lands in Issaquena County, Mississippi which lie in the Mississippi River adjacent to East Carroll Parish, Louisiana. Louisiana seeks an adjudication of the boundary line between Louisiana and Mississippi in the area of Stack Island, Mississippi and between East Carroll Parish, Louisiana and Issaquena County, Mississippi.

In a civil action presently pending in the United States District Court for the Southern District of Mississippi, Julia Donelson Houston, et al v. Ruth M. Thomas, et al, Civil Action No. W86-0080(B), the plaintiffs seek an adjudication that they are the owners in fee simple of the lands described in the Complaint, that the defendants have no rights in the said lands and that the District Court remove and cancel all clouds existing on the lands of Houston.

Though not an original defendant to the lower court proceedings, Louisiana filed a Motion to Intervene in the suit on June 17, 1987. The Court ordered the inter-

vention on June 30, 1987. After intervening in the District Court action, Louisiana proceeded to file, on July 30, 1987, its Intervention, a true copy of which is attached hereto as Exhibit "A".

Thereafter, Louisiana chose to file a Third Party Complaint against the State of Mississippi on November 24, 1987. A true copy of the Third Party Complaint is attached hereto as Exhibit "B".

Louisiana, in its Motion to Intervene, its Intervention, its Motion for Leave to File Third Party Complaint and its Third Party Complaint, chose not to raise the question of jurisdiction in the District Court. In its Intervention and in its Third Party Complaint, Louisiana prayed as follows:

> (1) That upon a final hearing hereof, judgment be entered determining the proper boundary line between the State of Louisiana and the State of Mississippi for all time periods pertinent to the issues set forth herein . . .
>
> (2) That upon a final hearing hereof, judgment be entered in this cause adjudicating the lands in question to the proper parties as owners thereof, as between plaintiffs, defendants, intervenors and third party defendant, the State of Mississippi, and further declaring the rights and other legal relations as between the parties.

Louisiana then filed, on September 14, 1988, its Motion to File Complaint, Complaint and Application for Stay Order, and Brief in Support of Motion, Complaint and Application for Stay Order. This Court denied the Application for Stay Order on October 3, 1988.

ARGUMENT

This action is within this Court's original jurisdiction under Article III, Section 2, Clause 2 of the United States Constitution and 28 U.S.C. §1251(a). Indeed, this Court has, on numerous occasions, exercised original jurisdiction over boundary disputes between states. *E.g.*, *Ohio v. Kentucky*, 100 S.Ct. 588 (1980); *Mississippi v. Arkansas*, 415 U.S. 289 (1974); *Nebraska v. Iowa*, 406 U.S. 117 (1972); *Louisiana v. Mississippi*, 384 U.S. 24 (1966); *Rhode Island v. Massachusetts*, 37 U.S. (12 Pet.) 657 (1838). Here, however, the Motion for Leave to File Complaint should be denied because of the pendency of the United States District Court action. (This Court has already denied Louisiana's Application for Stay Order by Order entered October 3, 1988.)

In *Arizona v. New Mexico*, 425 U.S. 794 (1976), this Court denied the motion of Arizona for leave to file a bill of complaint by concluding: "In the circumstances of this case, we are persuaded that the pending state-court action provides an appropriate forum in which the *issues* tendered here may be litigated." *Id.* at 797 (emphasis in original). The Court prefaced its holding by the following discussion of the invocation of the original jurisdiction:

> We recently reaffirmed that "our original jurisdiction should be invoked sparingly" in *Illinois v. City of Milwaukee*, 406 U.S. 91, 93-94 (1972), where we additionally stated:
>
> > "We construe 28 U.S.C. §1251(a)(1), as we do Art. III, §2, cl. 2, to honor our original jurisdiction but to make it obligatory only in appro-

> priate cases. And the question of what is appropriate concerns, of course, the seriousness and dignity of the claims; yet beyond that it necessarily involves the availability of another forum where there is jurisdiction over the named parties, where the issues tendered may be litigated, and where appropriate relief may be had. We incline to a sparing use of our original jurisdiction so that our increasing duties with the appellate docket will not suffer."

And, nearly, 40 years ago in *Massachusetts v. Missouri*, 308 U.S. 1, 18-19 (1939), the Court said:

> "In the exercise of our original jurisdiction so as truly to fulfill the constitutional purpose we not only must look to the nature of the interest of the complaining State—the essential quality of the right asserted—but we must also inquire whether recourse to that jurisdiction . . . is necessary for the State's protection . . . . We have observed that the broad statement that a court having jurisdiction must exercise it . . . is not universally true but has been qualified in certain cases where the federal courts may, in their discretion, properly withhold the exercise of the jurisdiction conferred upon them where there is no want of another suitable forum."

See also *Washington v. General Motors Corp.*, 406 U.S. 109, 113-114 (1972).

425 U.S. at 796-797.

Here, Louisiana intervened in the federal district court and then filed its Third Party Complaint against

Mississippi. All necessary and indispensible parties are before the Court.

Here, Louisiana has an adequate forum to present its claims—the United States District Court for the Southern District of Mississippi—where the same issues are before the District Court. Louisiana chose its forum to litigate the issues. Louisiana intervened as a party in a District Court suit—a suit that was simply an action to remove cloud on title.

Houston brought the suit to establish the boundary line to their land. It is incidental that the boundary line is also alleged to be the State line. The boundary line could have been an established roadway or an inland stream.

A denial of the Louisiana motion would work no irreparable harm upon Louisiana, would avoid further glutting the docket of this Court, and would avoid the expense and delay occasioned by the appointment of a Special Master. The last action of this nature filed by Louisiana, in which a Special Master was appointed to try the issues, resulted in a cost to the parties for the fees of the Special Master alone in excess of $64,000.00. *Louisiana v. Mississippi*, 466 U.S. 921, 80 L.Ed.2d 175, 104 S.Ct. 1701. These judicial economics are particularly important as the proceedings were begun in the United States District Court in July, 1986. The proceedings are ready to proceed to trial before the District Court.

Here, justice is far better served by a trial in the lower court, with appropriate review, than by a trial before a Special Master whose rulings this Court simply cannot consider with the care and attention it should.

In the event any parties are dissatisfied with the result reached by the United States District Court, they have the recourse of the normal appellate process of federal courts, including the review in this Court on Writ of Certiorari.

CONCLUSION

For these reasons, the Court should deny the Motion for Leave to File Complaint and should remit the case to the United States District Court for the Southern District of Mississippi, Western Division, for further proceedings.

Respectfully submitted,

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PROOF OF SERVICE

The undersigned, counsel for the defendants, and a member of the Bar of the Supreme Court of the United States, hereby certifies that copies of the foregoing Brief In Opposition To Motion For Leave To File Complaint, and Appendix, have been served by depositing same in a United States mailbox with postage prepaid, addressed to:

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Hon. William J. Guste, Jr.
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This 4th day of November, 1988.

ROBERT R. BAILESS

EXHIBIT A

No. W86-0080(B)

United States District Court for the Southern District of Mississippi Western Division

JULIA DONELSON HOUSTON, ET AL.,
Plaintiffs,

v.

RUTH M. THOMAS, ET AL.,
Defendants.

INTERVENTION

NOW INTO COURT, comes the State of Louisiana and the Lake Providence Port Commission, appearing herein through the Honorable William J. Guste, Jr., Attorney General and Gary L. Keyser, Assistant Attorney General, and files this Intervention, alleging the following:

NATURE OF ACTION

This is a civil action brought by plaintiffs under 28 USC 1332, alleging that plaintiffs are the owners in fee simple of a certain tract of land lying in Issaquena County, Mississippi, described with greater particularity in paragraph 52 of the Complaint to Remove Cloud. Plaintiffs allegedly derived their title to the said lands according to a chain of title described in paragraphs 54 et seq. of the original Complaint.

JURISDICTION AND VENUE

1. This court has jurisdiction over the subject matter of this action pursuant to 28 USC 1331, 1332, 2201 and 2202; as well as under the Constitution of the United States and an Act of Congress approved April 6, 1812, admitting the State of Louisiana into the Union of the United States of America, which act is found in Chapter 50 of the United States Statutes At Large, Volume 2, page 701; and, further, under the Treaty of Peace concluded between the United States and Great Britain, September 3, 1783, 8 Stat. 80.

2. Venue is proper before this district court pursuant to 42 USC 1391(f)(1), inasmuch as a substantial part of the property that is the subject of the action is or may be situated within this judicial district.

DEFENDANTS

3. Defendants, as alleged by plaintiffs, are adult nonresidents of the State of Mississippi, domiciled in Louisiana; the Federal Deposit Insurance Company; unknown heirs at law; and residents and domiciliaries of the State of Louisiana.

4. Intervenors are the State of Louisiana and the Lake Providence Port Commission, an agency or instrumentality of the State of Louisiana under 28 USC 1603.

REFERENCE STATEMENT

5. The original complaint filed herein on behalf of numerous plaintiffs claiming to be the owners in fee simple title of a certain tract of land purportedly lying in Mississippi, described with particularity in paragraph 52 thereof, is styled as a Complaint to Remove Cloud. The

plaintiffs are citizens of the State of Mississippi; adult non-residents of the State of Mississippi; domiciled in Louisiana; the Federal Deposit Insurance Company; and unknown heirs at law. The defendants are numerous and are named in paragraph 4-51, inclusive, it being alleged that none of them are residents of the State of Mississippi. However, it is noted that the Federal Deposit Insurance Corporation is named as both a plaintiff in the introductory statement and as a defendant in paragraph 47.

6. Plaintiffs recite their title as having derived from patents of the United States of America and subsequently recorded in Mississippi, as set forth in paragraph 54 of the complaint.

7. In paragraph 55 and following paragraphs, plaintiffs allege that Stack Island was affected by the divided flows of the Mississippi River into the natural erosion and accretion processes of the river, gradually migrating southward and westward. Natural processes have caused Stack Island to now be attached to the west bank of the Mississippi River.

8. The real question in dispute between the plaintiffs, defendants and intervenors is the location of the boundary line between the State of Louisiana and the State of Mississippi for all periods of time pertinent to the issues set forth in plaintiffs' complaint. The determination of the boundary involves an interpretation of the acts of Congress setting forth the boundaries and the determination of the boundaries between the two states. This controversy further involves the Equal Footing Doctrine of the states of the United States; and it further appears to your intervenors, and it is so alleged, that the Treaty

of Peace concluded between the United States and Great Britain on September 3, 1783, 8 Stat. 80, is also involved in this controversy, and including an interpretation thereof as it affects or may affect such boundary between the State of Mississippi and the State of Louisiana, which determination can only be made pursuant to the Constitution of the United States and federal law involving a question of the interpretation and application of federal law and jurisdiction.

9. This controversy involves a dispute between citizens in different states having separate and independent claims, as well as a dispute between citizens of one state and the sovereign itself of another state, i.e., the State of Louisiana, and the Lake Providence Port Commission, an agency and instrumentality of the State of Louisiana.

10. Plaintiffs' complaint appears to state a separate and independent claim as to each of the named defendants, with the possible exception of the Federal Deposit Insurance Corporation.

11. The amount in controversy as to each of the said defendants exceeds the sum of $10,000.00, exclusive of interest and costs, with respect to each such separate and independent claim as to each said defendant, including the State of Louisiana and the Lake Providence Port Commission, intervenors.

12. Intervenors show that a large and substantial portion of the lands in question are owned by the State of Louisiana and/or the Lake Providence Port Commission, and said intervenors are entitled to a declaration of their rights and other legal relations as against plaintiffs, pursuant to 28 USC 2201, et seq., and other applicable law,

as cited hereinabove and as may be found by the Court to be applicable to this cause.

WHEREFORE, intervenors, the State of Louisiana and Lake Providence Port Commission, respectfully pray:

(1) That upon a final hearing hereof, judgment be entered determining the proper boundary line between the State of Louisiana and the State of Mississippi for all time periods pertinent to the issues set forth herein, according to the acts of Congress setting forth the boundaries and determination of boundaries between said two states, including application of the Equal Footing Doctrine; the Treaty of Peace concluded between the United States and Great Britain, September 3, 1783, 8 Stat. 80 and an act of Congress approved April 6, 1812, admitting the State of Louisiana into the Union of the United States of America, United States Statutes at Large, Chapter 50, Volume 2, page 701, and other applicable law involving the question of boundary determination;

(2) That upon a final hearing hereof, judgment be entered in this cause adjudicating the lands in question to the proper parties as owners thereof, as between plaintiffs, defendants and intervenors, and further declaring the rights and other legal relations as between the parties;

(3) For such other relief as this Court may deem appropriate.

Respectfully submitted,

STATE OF LOUISIANA

WILLIAM J. GUSTE, JR.
Attorney General

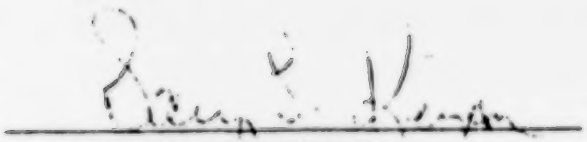

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EXHIBIT B

No. W86-0080(B)

United States District Court for the Southern District of Mississippi Western District

---

JULIA DONELSON HOUSTON, ET AL.,
Plaintiffs,

v.

RUTH M. THOMAS, ET AL.,
Defendants.

THIRD-PARTY COMPLAINT

NOW INTO COURT, comes the State of Louisiana and the Lake Providence Port Commission, Intervenors, appearing herein through the Honorable William J. Guste, Jr., Attorney General and Gary L. Keyser, Assistant Attorney General, and file this Third-Party Complaint, naming the State of Mississippi as third-party defendant, as follows:

1.

The original complaint filed herein on behalf of numerous plaintiffs claiming to be the owners in fee simple title of a certain tract of land purportedly lying in Mississippi, described with particularity in paragraph 52 thereof, is styled as a Complaint To Remove Cloud.

2.

The plaintiffs claim to be citizens of the State of Mississippi; adult non-residents of the State of Mississippi, domiciled in Louisiana; the Federal Deposit Insurance Company; and unknown heirs at law.

3.

The defendants are numerous named individuals residing in the State of Louisiana, as set forth in paragraphs 4-51, inclusive of the complaint.

4.

Plaintiffs recite their title as having derived from patents of the United States of America and subsequently recorded in Mississippi, as set forth in paragraph 54 of the complaint.

5.

On information and belief, defendants' title is derived from patents of the United States of America and from the State of Louisiana pursuant to its inherent sovereignty; under the Equal Footing Doctrine; and according to the Treaty of Peace concluded between the United States and Great Britain on September 3, 1783, 8 Stat. 80 and an act of Congress approved April 6, 1812, admitting the State of Louisiana into the Union of the United States of America, United States Statutes at Large, Chapter 50, Volume 2, page 701, and other applicable law involving the determination of boundaries. Accordingly, an interpretation of the said doctrines and treaty as they affect or may affect the boundary between the State of Mississippi and the State of Louisiana must be made pursuant to the

Constitution of the United States and federal law involving the question of the interpretation and application of federal law and jurisdiction.

6.

This controversy involves a dispute between citizens in different states having separate and independent claims; a dispute between citizens of one state and the sovereign itself of another state, i.e., the State of Louisiana and the Lake Providence Port Commission, an agency and instrumentality of the State of Louisiana; as well as a dispute between two sovereigns, the State of Louisiana and the State of Mississippi, concerning the location of the boundary line between the two states.

7.

A final determination of this controversy will involve not only the location of a proper boundary line between the State of Louisiana and the State of Mississippi for all times pertinent to the issues herein, but also a judgment adjudicating the lands in question to the proper parties as owners thereof as between plaintiffs, defendants, intervenors and third-party defendant, the State of Mississippi.

8.

Third-party plaintiffs show that a large and substantial portion of the lands in question are owned by the State of Louisiana and/or the Lake Providence Port Commission; a large and substantial portion of the lands in question are owned by residents of the State of Louisiana; and, accordingly, said parties are entitled to a declaration of

their rights and other legal relations as against plaintiffs and third-party defendant, the State of Mississippi, as set forth hereinabove and as may be found by the Court to be applicable to this cause.

9.

Third-party plaintiffs show that a final determination will also involve the location of a proper boundary line between the State of Louisiana and the State of Mississippi for all times pertinent to the issues herein and, also, a judgment adjudicating the lands in question to the proper parties as owners thereof as between plaintiffs, defendants, intervenors and third-party defendant, the State of Mississippi.

WHEREFORE, third-party plaintiffs, the State of Louisiana and the Lake Providence Port Commission, respectfully pray for judgment against third-party defendant, the State of Mississippi, as follows:

(1) That upon a final hearing hereof, judgment be entered determining the proper boundary line between the State of Louisiana and the State of Mississippi for all time periods pertinent to the issues set forth herein, according to the acts of Congress setting forth the boundaries and determination of boundaries between said two states, including application of the Equal Footing Doctrine; the Treaty of Peace concluded between the United States and Great Britain, September 3, 1783, 8 Stat. 80, and an act of Congress approved April 6, 1812, admitting the State of Louisiana into the Union of the United States of America, United States Statutes at Large, Chapter 50, Volume 2, page 701, and other applicable law involving the question of boundary determination;

(2) That upon a final hearing thereof, judgment be entered in this cause adjudicating the lands in question to the proper parties as owners thereof, as between plaintiffs, defendants, intervenors and third-party defendant, the State of Mississippi, and further declaring the rights and other legal relations as between the parties; and

(3) For such other relief as this Court may deem appropriate.

Respectfully submitted,

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